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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/626,678 | 07/24/2003 | Guenter Barth | 10191/3274 | 1042 |
| 26646 | 7590 | 09/30/2004 | EXAMINER | |
| KENYON & KENYON ONE BROADWAY NEW YORK, NY 10004 | | | LERNER, AVRAHAM H | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3611 | |
| DATE MAILED: 09/30/2004 | | | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/626,678

Applicant(s)

BARTH ET AL.

Examiner

Avraham Lerner

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1,9 and 10 is/are rejected.
- 7) ☒ Claim(s) 2-8 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 0703.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Information Disclosure Statement

2. The Information Disclosure Statement, filed July 24, 2003, is acknowledged and has been considered.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 9, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Ghoneim et al. (U.S. Patent No. 5,025,882).

Ghoneim et al. discloses a device and method comprising all steps as claimed, including activating a driver-independent braking intervention in at least one wheel tending to spin, and if the braking intervention does not result in stabilization of the vehicle, activating a reduction of the engine torque (see column 3, first full paragraph). Note that regarding the language presented in claim 9, in order to be entitled to weight in method claims, the recited limitation must affect the method in a manipulative sense. *Ex parte Pfeiffer*, 1962 C.D. 408 (1961).

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5. Claims 1, 9, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Zimmer et al. (U.S. Patent No. 5,357,434).

Zimmer et al. discloses a device and method comprising all steps as claimed, including activating a driver-independent braking intervention in at least one wheel tending to spin, and if the braking intervention does not result in stabilization of the vehicle, activating a reduction of the engine torque (see claim 5, lines 12-15). Note that regarding the language presented in claim 9, in order to be entitled to weight in method claims, the recited limitation must affect the method in a manipulative sense. *Ex parte Pfeiffer*, 1962 C.D. 408 (1961).

Allowable Subject Matter

6. Claims 2-8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Billig et al. (U.S. Patent Application Publication No. 2002/0040269), Kopper et al. (U.S. Patent No. 5,164,902), Hessmert et al. (U.S. Patent No. 6,419,038), Yasuda (U.S. Patent No. 6,371,234), Takagi et al. (U.S. Patent No. 6,324,458), Masberg et al. (U.S. Patent No. 6,199,650), and Matsuno et al. (U.S. Patent No. 5,850,616) disclose controls for anti-slip devices in all-wheel drive vehicles.

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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Avraham Lerner whose telephone number is (703) 308-0423.

The examiner can normally be reached on M-F (8:15-5:45) first Wednesday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on (703) 308-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AVRAHAM LERNER
PRIMARY EXAMINER

A. Lerner 9/28/04

September 28, 2004